

**PATENT**

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App. Ser. No.: 10/691,262

**REMARKS**

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks.

By virtue of the amendments above, Claims 1, 6, and 12 have been amended and Claims 4, 5, 9, 14, and 15 have been canceled without prejudice or disclaimer of the subject matter contained therein. Accordingly, Claims 1-3, 6-8, 10-13, and 16-20 are pending in the present application, of which, Claims 1, 6, and 12 are independent.

No new matter has been introduced by way of the claim amendments; entry thereof is therefore respectfully requested.

**Claim Rejections Under 35 U.S.C. §103(a)**

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_, 82 USPQ2d 1385 (2007):

"Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented." Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there

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must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) "Obvious to try"—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness."

Furthermore, as set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, "[a]ll claim limitations must be considered" because "all words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385.

If the above-identified criteria and rationales are not met, then the cited references fail to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited references.

**PATENT**Atty Docket No.: 200310181-I  
App. Ser. No.: 10/691,262**Claim 1-3, 6-8, 12, 13, and 16-20**

Claims 1-3, 6-8, 12, 13, and 16-20 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,279,113 to Vaidya in view of Skonnard ("SOAP: The Simple Object Access Protocol"). Initially, the heading of paragraph 3 in the Official Action omits Claims 4, 5, and 11, but the body of the rejection specifically addresses Claims 4, 5, and 11 and thus, it is assumed that the heading contains a typographical error and that Claims 4, 5, and 11 were intended to be included in the heading of paragraph 3. In any regard, this rejection is respectfully traversed for at least the following reasons.

Independent Claim 1, as amended, recites that the network query client is configured to send authenticating information to the network query server, to send a query to the network query server related to how resources in the second network are used, wherein the network query server is configured to send authentication approval information to the network query client, to collect data related to how resources in the second network are used, and to send collected data to the network query client, and wherein at least one query is formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism.

Independent Claim 6, as amended, recites the steps of sending, by the network query client, authenticating information to the network query server, sending, by the network query server, authentication approval information to the network query client, sending, by the network query client, at least one network usage query, receiving, by the network query server, at least one network usage query from the network query client, the at least one query formatted to enable transmission using Hypertext Transfer Protocol (HTTP) as the underlying transport mechanism, collecting, by the network query server, information

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requested by the network usage query, and sending, by the network query server, the collected information to the network query client.

Independent Claim 12, as amended, recites the steps of sending, by the network query client, authenticating information to the network query server, sending, by the network query server, authentication approval information to the network query client, sending, by the network query client, at least one network configuration query to the network query server, the at least one query formatted to enable transmission using Hypertext Transfer Protocol (HTTP') as the underlying transport mechanism, collecting, by the network query server, network configuration information requested by the network usage query, receiving, by the network query client, information related to the network usage configuration query collected by the network query server, and sending, by the network query server, the collected network configuration information to the network query client.

Vaidya pertains to a method and system for providing security on a communication system having a LAN 11 and a remote network 24. *Vaidya*, column 5, lines 5-25. In setting for the rejection based upon the disclosure contained in Vaidya, the Official Action asserts that the central data repository 12 in the network (LAN) 11 is equivalent to the claimed network query client residing in a first network. The Official Action also asserts that the data collector 10 residing in the remote network 24 is equivalent to the claimed network query server residing in a second network. In addition, the Official Action further asserts that the data collector 10 is operable to collect usage data associated with the second network 24 and to respond to at least one query regarding usage of the second network 24 from the central data repository 12 using HTTP as the underlying transport mechanism. *Official Action*, page 2, lines 13-21.

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The assertion that Vaidya discloses that at least one query regarding usage of the second network 24 from the central repository 12 using HTTP as the underlying transport mechanism is contradictory to a subsequent concession that Vaidya fails to disclose the use of HTTP to send queries. See *Official Action*, page 3, lines 1-3. In fact, the only reason that the Official Action cites to Skonnard is because the Official Action concedes that Vaidya fails to disclose of HTTP to send queries. See *Official Action*, page 3, lines 4-8. At least by virtue of these contradictory statements in the Official Action, the rejection of independent Claims 1, 6, and 12 is clearly improper and should thus be withdrawn.

The rejection of independent Claims 1, 6, and 12, as amended, based upon the combined disclosures of Vaidya and Skonnard is also improper for additional reasons. For instance, independent Claims 1, 6, and 12 have been amended to incorporate subject matter from now-canceled Claims 9 and 14, which the Official Action has indicated as containing subject matter that is not taught by the proposed combination of Vaidya and Skonnard. For at least this additional reason, it is respectfully submitted that the proposed combination of Vaidya and Skonnard fails to render obvious independent Claims 1, 6, and 12 and that the rejection of these claims is now considered moot.

As another example, the proposed combination of Vaidya and Skonnard fails to disclose that the network query client is configured to send a query to the network query server related to how resources in the second network are used, that the network query server is configured to collect data related to how resources in the second network are used, and that the network query server is configured to send the collected data to the network query client, as claimed in independent Claims 1, 6, and 12. The data related to how resources in the

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second network are used may comprise any of the data discussed in paragraph 15 of the present Specification.

In any regard, and in contrast to the claimed invention, Vaidya discloses that "[t]he data repository 12 polls the data collectors 10 to obtain network security data." *Vaidya*, column 5, lines 26 and 27. The data repository 12 uses the network security data to determine whether there have been unauthorized access into the network 11. Thus, the network security data discussed in Vaidya differs from the data related to how resources in the second network are used as claimed in independent Claims 1, 6, and 12. For instance, the claimed invention is concerned with how the resources in the second network are used, whereas the network security data of Vaidya is concerned only with unauthorized access to the resources in the network. Accordingly, Vaidya fails to disclose the above-identified feature of independent Claims 1, 6, and 12.

Furthermore, the proposed combination of Vaidya and Skonnard is improper because Vaidya actually teaches away from the proposed combination, for the reasons presented in the Response filed on July 1, 2008.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of independent Claims 1, 6, and 12 and the claims that depend therefrom and to allow these claims.

**Claims 9 and 14**

Claims 9 and 14 have been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Vaidya and Skonnard as applied to independent Claims 1 and 12, and further in view of U.S. Patent No 5,978,478 to Korematsu. The features of Claims 9 and 14

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have been incorporated into independent Claims 1 and 12 and these claims have been canceled without prejudice or disclaimer of the subject matter contained therein. Accordingly, the rejection of Claims 9 and 14 will be addressed with respect to independent Claims 1 and 12. Additionally, independent Claim 6 will also be addressed herein because it contains similar features as those presented in independent Claims 1 and 12. In any regard, for at least the following reasons, it is respectfully submitted that independent Claims 1, 6, and 12 are allowable over the proposed combination of Vaidya, Skonnard, and Korematsu for at least the following reasons.

Initially, it is respectfully submitted that the proposed combination of Vaidya and Skonnard fails to disclose all of the features of independent Claims 1, 6, and 12 as discussed above.

The Official Action additionally concedes that the proposed combination of Vaidya and Skonnard fails to disclose that the data repository 12 performs the claimed authentication steps with the data collector 10. *Official Action*, page 5, lines 1 and 2. In an effort to make up for the deficiencies in Vaidya and Skonnard, the Official Action relies upon the disclosure contained in Korematsu. More particularly, the Official Action asserts that the disclosure contained in column 1, lines 46-59 of Korematsu discloses authentication steps between an authenticating party and a party to be authenticated. In addition, the Official Action asserts that the proposed combination of Vaidya, Skonnard, and Korematsu is desirable to ensure that "network attack information is not passed to non-trusted entities." *Official Action*, page 5, lines 7-11.

Regardless, however, of whether a person of ordinary skill in the art would somehow have been motivated to combine the disclosures of Vaidya, Skonnard, and Korematsu as

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suggested in the Official Action, the proposed combination would still fail to disclose all of the features of the claimed invention as set forth in independent Claims 1, 6, and 12. For instance, the proposed combination would still fail to disclose the use of HTTP as the underlying transport mechanism. In addition, the proposed combination would still fail to disclose that the network query client is configured to send a query to the network query server related to how resources in the second network are used, that the network query server is configured to collect data related to how resources in the second network are used, and that the network query server is configured to send the collected data to the network query client, as claimed in independent Claims 1, 6, and 12.

Accordingly, the Examiner is respectfully requested to withdraw the rejection of independent Claims 1, 6, and 12 and the claims that depend therefrom and to allow these claims.

**Claim 10**

Claim 10 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Vaidya, Skonnard and Korematsu as applied to Claims 6 and 9 above, and further in view of U.S. Patent Application Publication No 2002/0049909 to Jackson et al. This rejection is respectfully traversed for at least the following reasons.

As discussed above, the proposed combination of Vaidya, Skonnard and Korematsu fails to disclose the features of independent Claim 6, as amended. In addition, the Official Action notes that the proposed combination of Vaidya, Skonnard and Korematsu fails to disclose authenticating periodically. In an effort to make up for this deficiency, the Official Action relies upon the disclosure contained in Jackson et al. More particularly, the Official

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Action asserts that Jackson et al. discloses "verification of authentication at periodic or continual times." As such, the Official Action has not relied and cannot reasonably rely upon Jackson et al. to make up for the deficiencies discussed above with respect to independent Claim 6.

Accordingly, even assuming for the sake of argument that the combination of Vaidya, Skonnard, Korematsu, and Jackson et al. proposed by the Official Action were somehow considered to be valid, the proposed combination would still fail to disclose all of the features claimed in Claims 6 and 10, as amended, and that therefore, a *prima facie* case of obviousness has not been established under 35 U.S.C. § 103. Accordingly, the Examiner is respectfully requested to withdraw the rejection of Claim 10 and to allow this claim.

**Claim 15**

Claims 15 has been rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Vaidya and Skonnard as applied to independent Claim 12 above, and further in view of U.S. Patent No. 7,137,139 to Smith. This rejection is now considered moot because Claim 15 has been canceled without prejudice or disclaimer of the subject matter contained therein.

**Conclusion**

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below.

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Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: December 23, 2008

By

  
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